



5/019/030

Moab District  
Grand Resource Area  
885 South Sand Flats Road  
Moab, Utah 84532

3802  
(UT-068)

Memorandum

To: Regional Solicitor, Intermountain Region  
Through: State Director, (U-920)

FEB 16 1993

From: Area Manager, Grand Resource Area

Subject: Transmittal of Case File

Re: Appeal of Trespass Notice  
Westwater Wilderness Study Area  
Mining Claims UMC 277243 - UMC 277248  
Ron Pene, Claimant and Appellant

Enclosed please find the original case file for the above referenced appeal. We apologize for the delay in transmitting the file, the delay resulting in part from confusion as to whether or not the appeal was actually submitted to and docketed by the Interior Board of Land Appeals (IBLA).

In brief, this appeal was filed by mining claimant Ron Pene in relation to a notice of trespass sent to Mr. Pene by the Grand Resource Area on October 5, 1992. The notice of trespass resulted from unauthorized work conducted by Mr. Pene on portions of the above referenced mining claims located within the Westwater Canyon Wilderness Study Area (WSA). Based on a field investigation of this work, it is our opinion that the nature of the work conducted by Mr. Pene on these claims would have clearly required a Plan of Operations in accordance with provisions of 43 CFR 3802 regulations, primarily since a tracked vehicle was used and new roads constructed within the WSA.

Mr. Pene had originally filed a Notice to conduct assessment work with the Utah State Office (USO) by letter dated June 26, 1991. The USO notified Mr. Pene by letter dated August 1, 1991 to submit the Notice directly to the GRA. Mr. Pene then submitted a copy of the assessment Notice to GRA, with GRA receiving this correspondence on August 6, 1991. By letter dated August 13, 1991, the GRA returned Mr. Pene's notice with a request for further information on his proposal prior to processing of the Notice.

The August 13, 1991 correspondence to Mr. Pene also included a copy of the 43 CFR 3802 regulations for his use in submitting relevant and proper information regarding his proposal to conduct work on those portions of his mining claims located within the Westwater Canyon WSA. To the best of our knowledge the work identified in the 1991 assessment Notice was never conducted.

No further correspondence or activity occurred regarding this situation until August 18, 1992 when GRA's Westwater Canyon River Rangers discovered significant surface disturbing activity had taken place on the mining claims without BLM's knowledge. The nature of this activity is well documented in the staff report prepared by the Westwater Rangers and enclosed in the case file.

By letter dated October 5, 1992 Mr. Pene was served a notice of trespass, instructed as to what would be required to rehabilitate the damage as a result of this trespass, and given the right of appeal to IBLA in accordance with provisions of 43 CFR 4.400.

By certified letter dated October 19, 1992, Mr. Pene acknowledged receipt of the October 5, 1992 trespass notice, acknowledged conducting said work, and informed GRA that an appeal would be taken. This letter and notice of appeal was also sent to the Regional Solicitor's office.

By correspondence dated January 26, 1993, Mr. Pene's legal counsel requested a Motion for Judgement on the Pleadings before the U.S. Office of Hearings and Appeals regarding the appeal.

This background brings us to the current situation, with two issues that need to be addressed at this time. The first issue involves notice of appeal to IBLA. There is reason to believe that Mr. Pene and his legal counsel may have never formally notified IBLA of the above appeal, and may have simply notified the GRA and the Regional Solicitor of their intent to appeal. Consequently, the appeal may be moot as formal notification of appeal to IBLA may not have been made.

The second issue involves a recommendation for expedited review in the event IBLA determines notice of appeal was timely and correctly filed. Our rationale for requesting an expedited review is that the amount of physical damage resulting from the trespass action may have impaired the wilderness characteristics of the Westwater Canyon WSA. The Bureau's wilderness designations have been completed and forwarded to the President for his consideration prior to final action by Congress. The GRA trespass notice identified the need and requirements for reclamation to repair damage from the work conducted by Mr. Pene. Such rehabilitation, if conducted in a timely manner, may allow preservation of the area's wilderness characteristics prior to the President and Congress initiating final action on this particular WSA.

In closing, if your analysis determines the appeal to be valid, we would request further involvement in assisting your office in preparing a response to the appellant's Statement of Reasons. If you have any questions regarding the situation please contact myself or Lynn Jackson in the Grand Resource Area. Thank you for your attention to this matter, and we look forward to guidance and/or resolution from your office.

Enclosure: Case file as noted

cc: U-065, Minerals  
U-062, Resources  
Alex VanHemert

LJACKSON/lj 2/9/93